Appendix "A"

January 14, 1960

THE STATE OF ALABAMA, JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1959-60

3 Div. 865

The State of Alabama

v.

Transcontinental Gas Pipe Line Corporation,
A Corporation

Appeal from Montgomery Circuit Court,
In Equity

SIMPSON, JUSTICE.

The State Department of Revenue made an assessment for franchise taxes under the provisions of Sec. 348, Title 51, Code of 1940, as amended, covering the tax year 1956 against Transcontinental Gas Pipe Line Corporation, a corporation. From this final assessment the appellee appealed to the Circuit of Montgomery County, Alabama, in Equity, under the provisions of Title 51, Sec. 140, Code of Alabama 1940. The case was submitted in the lower court on the bill of complaint and answer; a written stipulation and agreed statement of facts and exhibits thereto; the testimony of one witness and the oral arguments and briefs filed by counsel. From the final decree rendered in favor of Transcontinental Gas Pipe Line Corporation the State prosecutes this appeal.

The facts as found by the trial court are as follows: Appellee was in 1956 and prior thereto a corporation organized under the laws of Delaware. It was in 1956, and at all times has been, a natural gas company in interstate commerce within the meaning of the Act of Congress known as the Natural Gas Act, 15 U.S.C. 717-717w, and subject to the jurisdiction of the Federal Power Commission, operating in Alabama and other states solely under certificates of public convenience and necessity issued by the Federal Power Commission. Appellee has never sought certificates of public convenience and necessity from, or approval of its rates and tariffs by, the State of Alabama or any other State, and the State of Alabama has never asserted any regulatory authority or jurisdiction over any of its rates or practices.

During 1956 appellee owned and operated an interstate natural gas transmission system extending approximately 3,087 miles from sources of gas supply in Texas and Louisiana through the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey to a terminus at New York City. Some 353 miles of this pipeline were located in Alabama.

As the gas transported by the appellee moved through the interstate transmission line, its pressure was gradually lost by friction, requiring the use of compressor stations located at intervals to increase the pressure so that the gas would continue to move. Three compressor stations were owned and operated by appellee in Alabama in 1956. Each compressor station was comprised of several buildings and facilities. At each appellee used gas from its main pipeline as fuel for

compressor engines and for heating offices, shops and warehouse facilities and houses. The appellee used gas from its main lines to provide fuel for engines which generated electricity which was also used at its stations. It procured water from rivers, creeks, etc. close to each station in Alabama. It maintained one or more large tanks at each station for water for domestic and personal use at all buildings which were a part of the station, and at two of the stations maintained tanks for water necessary for the operation of the station.

In order to assure the operation of each compressor station, it was necessary for trained persons to be readily available for duty at all times. For this purpose appellee maintained houses at the various stations and required that the superintendent and repair foreman of each station occupy a house. The other houses were occupied by persons highly skilled in the operation of the station. The houses at the stations were occupied by employees of appellee who paid rent of $10.00 a month which was less than the annual depreciation. The appellee furnished without charge to each house electricity generated by it and gas and water from the domestic supply.

The order of the Federal Power Commission granting appellee its certificate of public convenience and necessity provided that "Transcontinental is authorized to transport and sell natural gas in interstate commerce" to certain companies and communities, including some in Alabama, and that "Transcontinental shall not transport or sell natural gas to or for any customer except as authorized herein". From time to time the F.P.C. ordered appellee to serve additional municipal corporations in Alabama. During 1956 appellee sold gas in Alabama to

no person, firm or corporation except thirteen municipalities. The sale of gas to each was pursuant to and in conformity with orders of the F.P.C. entered in response to petitions of the purchasers or their official representatives seeking mandates directing the sales, and facilities used for deliveries were constructed pursuant to and in conformity with orders of the F.P.C. Orders of the F.P.C. forbade the delivery by appellee of gas to the buyer at a pressure less than 50 pounds per square inch gauge. At no time was gas delivered at a pressure less than 50 pounds per square inch gauge, but was always delivered at a pressure substantially higher than 50 pounds per square inch gauge. In order to be useable it was necessary to reduce the pressure substantially from the pressure at which it was delivered by appellee.

During 1956 appellee owned and operated 12 meter stations designed to measure gas delivered to municipalities located in Alabama. Every meter station was as near the main pipeline as prudent engineering, reasonable accessibility and accepted safety practices would permit. All but three of such meter stations were within 100 feet of the pipeline, and the remaining ones were within 210 feet. All facilities to the point of delivery were owned by appellee. All facilities after the point of delivery were owned by the purchaser.

The gas purchased in 1956 by each municipal corporation in Alabama was purchased primarily for resale with small quantities of it being used and consumed by each purchaser. No municipal corporation used more than 2% of the gas purchased.

It was necessary for each municipality purchasing gas from appellee to reduce the pressure of the gas below the pressure at delivery before using it or reselling it.

All other activity of appellee in 1956 was found by the trial court to be an integral and necessary part of either the construction or maintenance of its interstate transmission system. It maintained an integrated VHF mobile and microwave radio-telephone communication system in this regard; it rented buildings to house work equipment; it rented for approximately two weeks a small office in connection with its authorized construction; it stored pipe which was used in the construction; it maintained small bank accounts in each of four banks in Alabama in connection with the construction of its transportation system.

In 1952 the F.P.C. at the instance of appellee and Southern Natural Gas Company, a Delaware corporation, issued certificates of public convenience and necessity to each corporation authorizing Southern and appellee to construct and operate facilities for the exchange or sale or delivery of natural gas between Southern's pipeline system and appellee's pipeline system. These facilities were, in the language of the F.P.C. order "proposed to be used in the transportation and sale of natural gas for resale in interstate commerce". The two companies entered into contracts whereby each agreed to sell or buy gas from the other. During 1956 appellee sold no gas to Southern in Alabama. During the period from May 17, 1956 and ending May 19, 1956, and the period beginning June 29, 1956 and ending June 30, 1956, Southern, pursuant to the aforesaid contract, sold gas to appellee in Alabama. Appellee purchased gas from Southern in May and June, 1956, due to a temporary shutdown of its transmission system west of Alabama on account of construction or relocation of its system. During these periods Southern sold appellee a total of 148,242 MCF of

natural gas for which appellee paid $31,068,900. All of the natural gas sold in Alabama in 1956 by Southern to appellee was produced in states other than the State of Alabama and brought into Alabama from such other states by Southern's pipeline system. The pressure of the gas was not reduced in the course of the delivery from Southern's system to appellee's system.

The trial court found that appellee has never maintained any general or corporate office in Alabama, nor has it any personnel located in this state who are authorized to solicit business, accept contracts for purchase or sale of gas, settle or adjust accounts, determine managerial policy, or otherwise perform management functions other than those relating solely to the operation, construction, and maintenance of its transmission system.

All records kept by appellee in Alabama during 1956 were found to be only those records pertaining to its interstate transmission system. All employees of appellee were those engaged solely and directly in the service of constructing maintaining or operating its interstate system.

Appellee paid all ad valorem taxes assessed by proper state authorities on its property located in Alabama, income taxes to the State of Alabama on its net income allocated to business done in Alabama, sales or use taxes on all tangible personal property purchased or used in its interstate activities in Alabama, and unemployment compensation taxes with respect to its employees in Alabama.

The questions involved in this case are:

1. Does The Alabama Foreign Corporation Franchise Tax apply to a foreign corporation engaged solely in *interstate* commerce in Alabama?

2. If the tax is applicable to a foreign corporation doing solely an interstate business in this state, is it violative of the commerce clause of the Federal constitution?

3. Was Transcontinental Gas engaged solely in interstate commerce in Alabama in 1956?

The first of these questions has been answered in the negative in *State v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So. 2d 549, where this court after reviewing the history of the Foreign Corporation Franchise Tax law of this state held:

"The Alabama franchise tax on foreign corporations is not applicable to foreign corporations doing an exclusively interstate business in Alabama."

There is no occasion, then, to consider anew the second question outlined above. It, too, has been answered in the *Plantation* case, *supra*.

This brings us to the primary issue in the case, and the one most strongly contested by the parties, the State contending that Transcontinental Gas Pipe Line Corporation was in fact doing an intrastate business in Alabama in 1956 and is therefore subject to the Foreign Corporations Franchise Tax. Appellee contends it engaged exclusively in an interstate business in Alabama in 1956 and is not subject to the tax. With respect to this issue the lower court concluded that Transcontinental was engaged solely in interstate commerce in

Alabama in 1956. Every activity carried on by appellee was found by the trial court to be a necessary, inherent and integral part of the interstate transmission of natural gas or the construction of facilities for such transportation. The trial court was of the opinion that this case is controlled by the decision in the *Plantation Pipe Line* case, *supra*.

The facts of that case were summarized by the court as follows:

> "Plantation Pipe Line Company is a corporation which was organized under the laws of the State of Delaware on July 8, 1940. . . . . .
>
> "Plantation Pipe Line Company qualified to do business in Alabama in 1941. . . . . .
>
> "Plantation Pipe Line Company has never filed nor sought approval of its rates and tariffs by the State of Alabama or any other state and the State of Alabama has never asserted any regulatory authority or jurisdiction over any of the rates or practices of the Plantation Pipe Line Company.
>
> "During the year 1952 Plantation Pipe Line Company owned and operated a pipe line running from Baton Rouge, Louisiana, to Greensboro, North Carolina with lateral lines from Helena, Alabama, to Birmingham and Montgomery, Alabama, and from Bremen, Georgia, to Columbus and Macon, Georgia, and to Chattanooga and Knoxville, Tennessee. The length of the lines, with laterals, was approximately 1,968 miles, of which approximately 483 miles were located in Alabama. The total investment in carrier property, including construction work in progress as of January 1, 1952, was approximately $69,615,442.47 for the entire system and within the State of Alabama on the same date was approximately $17,095,063.34. . . . . .

"After the products are pumped into the pipe line at Baton Rouge, the flow gradually slows down as the product moves, requiring the use of pumps located at intervals to maintain the flow. Three pumping stations were operated in Alabama in 1952 with stand-by facilities at four points in the State of Alabama.

"Plantation Pipe Line Company had four delivery terminals in Alabama in 1952, at Moundville, Birmingham, Montgomery and Oxford. It did not make delivery of any products shipped through its pipe line at any point in Alabama other than at these terminals. This was in conformity with its tariff. Plantation did not maintain any storage tanks at any delivery terminal or elsewhere in Alabama. As required by the tariff, shippers receive their products from the pipe line without delay. . . . . .

"In order to assure uninterrupted operation of the pipe line, it is necessary that the person in charge of each pumping station and stand-by facility be on duty or on call at all times and for this purpose the company maintains at each station one house which it required the responsible employee to occupy and for which he is charged rent in an amount less than the annual depreciation and repairs.

"At each of the operating pumping stations there is a water tank primarily for fire protection. Water from the tank is never sold commercially but is used, incidentally and without charge, by employees at the pumping station and in the company house.

"The company maintains at Helena a warehouse where are stored maintenance materials for the operation of the pipe line. It also maintains a fire truck at Helena.

"Plantation Pipe Line Company had 82 employees in Alabama on January 1, 1952, and 68 on January 1, 1953. The only employees in Alabama in 1952 were those engaged solely and directly in the service of constructing, maintaining and operating the pipe line. The

company had three trucks at Akron, and a truck at Helena and Silver Run in 1952, which were used only to carry employees from place to place in connection with their work in the construction, maintenance and operation of the pipe line, to carry needed supplies and for other purposes directly connected with the construction, maintenance and operation of the pipe line.

"Some construction was carried on in 1952 by an independent contractor consisting of enlarging the pumping facilities on the main lines. Similar work was done at Helena in 1951 and some clean-up work in connection with such construction was done at Helena in 1952.

"To keep its pipe line system in operation Plantation Pipe Line Company maintained by means of lines leased from others a communications system between its terminals, pumping stations, and its chief operating office in Atlanta. Plantation Pipe Line Company has never maintained any general or corporate office in Alabama. Its statutory domicile is and has been in Atlanta, Georgia. Plantation Pipe Line Company has never kept any records in Alabama except pumping station and terminal operating records necessary to the transportation of products received into the pipe line in Louisiana. It has never performed any functions in Alabama except those of constructing, maintaining and operating the pipe line." 262 Ala. at 74-76, 89 So. 2d at 551-553.

This court held that Plantation was not doing local business in Alabama and was not subject to the Foreign Corporations Franchise Tax.

The State in this case contends that there are controlling factual differences between the *Plantation* case, *supra*, and the present case, and that these differences demand that a different result be reached. The appellee contends that there are

material differences between the facts of this case and those presented in the *Plantation* case. The trial court was of the opinion that the *Plantation* case was controlling, but went on to answer categorically the State's contentions. We, too, will consider them:

A. Does the fact that appellee reduced the pressure of the gas somewhat before delivery to the various municipalities to which it was sold constitute doing a local business in Alabama? Reduction in pressure before delivery was held not to change the character of the company's interstate activities in *Mississippi River Fuel Corporation v. Hoffman*, 4 111 2d 468, 123 N. E. 2d 503, cert. den. 349 U.S. 935, 99 L.Ed. 1264, and in *Gay v. United Gas Pipe Line Company*, 159 Fla. 659, 32 So. 2d 600, where the gas was not produced in the taxing state. It should be remembered that although appellee reduced the pressure somewhat before delivery, it was necessary for the purchaser to further reduce it before it could be used or resold.

B. The State contends that the fact that some of the gas brought by the municipalities was consumed by the municipality (not more than 2% of the amount purchased by each) constitutes intrastate activity on the part of appellee. The sale and transportation of the gas is interstate commerce when furnished to local utilities for resale. *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana*, 332 U. S. 507, 926 L. Ed. 128. The fact that a small percentage of the gas transported and sold by appellee was consumed by the purchaser does not change the nature of the act of selling and transporting. The transportation and sale, as we see it, is in

interstate commerce under the decision in *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana, supra.*

C. The State contends that the fact that the company in the *Plantation* case was a common carrier while the appellee is not (the appellee transporting its own gas) dictates a different result in this case. The trial court was of the opinion, and we are agreed, that commerce is not limited to transportation. In the language of the trial court: "Persons transporting their own product, gas, which they sell, can be, and are, engaged exclusively in interstate commerce" citing *Mississippi River Fuel Corporation v. Hoffman, supra; Texas Gas Transmission Corporation v. Atkins*, 197 Tenn. 123, 270 S.W. 2d 384, cert. den. 348 U.S. 883, 99 L. Ed. 694; *Gay v. United Gas Pipe Line Company, supra;* and *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana, supra.* It was held that gas companies transporting natural gas which they owned and which was sold to local utilities for resale, and to industrial customers for consumption, were engaged exclusively in interstate commerce.

We think there is no merit to the State's contention that the fact that appellee bought gas from Southern Natural Gas Corporation in 1956 constitutes doing a local business in this state. The trial court found that all the gas bought by appellee from Southern was produced in states other than Alabama; the pressure of the gas was not reduced before transmission to appellee's system and the interstate movement of it was never interrupted. We agree with the trial judge that *Coverdale v. Arkansas-Louisiana Pipe Line Company*, 303 U.S. 691, 82 L.

Ed. 1023 (1938) is not controlling here, inasmuch as the gas in that case *was produced in the taxing state* and the incidence of the tax in that case is not the same as that involved here. We are dealing here with a tax based upon "doing a local business" in Alabama -- there the tax was based upon the operation of prime movers.

We are of the opinion that the facts of this case indicate that appellee was engaged exclusively in interstate commerce in Alabama in 1956. - *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602, 95 L.Ed. 573; *Ozark Pipe Line Corporation v. Monier*, 266 U.S. 555, 69 L.Ed. 439; *United Air Lines, Inc. v. Joseph*, 282 App. Div. 48, 121 N.Y. Supp. 2d 692, aff'd 307 N.Y. 762, 121 N.E. 2d 557.

We find no controlling difference between the facts here and the facts of the *Plantation* case, *supra*, decided by this Court in 1956. We entertain the view, therefore, that the decision of the trial court was correct.

Affirmed

Livingston, C. J., Goodwyn and Coleman, J. J., concur.

Appendix "B"

Judgment of Supreme Court of Alabama

Thursday, January 11, 1968

Came the parties by Attorneys, and the record and matters therein assigned for errors, being submitted on briefs in lieu of oral argument, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, In Equity, there is no error.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the decree of the Circuit Court, in Equity, be and is hereby in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that the appellant, The State of Alabama, pay the costs of appeal of this Court and of the Circuit Court, In Equity, for which costs let execution issue accordingly.

Appendix "C"
Opinion of State Supreme Court Extended on Rehearing

3 Div. 865

State of Alabama

v.

Transcontinental Gas Pipe Line

On Rehearing

SIMPSON, J.

At the earnest request of the ever zealous assistant attorney general, we postponed consideration of the State's application for rehearing, pending final disposition by the United States Circuit Court of Appeals (5th Circuit) of the cases of *Ideal Cement Co., appellant, versus United Gas Pipe Line Co., appellee*, No. 18103 and *Scott Paper Co., appellant, versus United Gas Pipe Line Co., appellee*, No. 18118.

The United States District Court held that the taxable event in those cases was an intrastate transaction, and it was thought by appellant that these federal cases would be persuasive to grant the rehearing in the case at bar, should the Circuit Court of Appeals affirm. There were some factual differences between the *United* cases and *Transco*, but we agreed to the postponement of action on the State's rehearing in the case at bar pending the decision by the Circuit Court of Appeals.

The Circuit Court of Appeals on September 2, 1960 reversed the District Court, holding in effect that the transaction

described in the *Yates* cases was interstate. The holding in these cases is, therefore, persuasive of the correctness of our holding in *Transco*.

We therefore adhere to the holding of our original opinion and overrule the application for rehearing.

Opinion extended and rehearing denied.

Livingston, C. J., Goodwyn and Coleman, J. J., concur.

Appendix "D"

Order of State Supreme Court Denying Rehearing

Order of State Supreme Court Denying Rehearing

IT IS ORDERED, that the application for rehearing filed by the appellant in this cause on January 29, 1960, after being duly examined and understood by the Court, be and is hereby overruled; and the opinion as originally announced is extended by writing page 17 "On Rehearing"

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Appendix "E"

Opinion and Judgment of Circuit Court

This is an appeal under the provisions of Title 51 Section 140 Alabama Code of 1940, from the assessment of a franchise tax against appellant, herein called Transco, by the State Department of Revenue purporting to act under the authority of Title 51, Sections 348, et seq., levying an annual franchise tax on foreign corporations doing business in Alabama. Appellant contends that the statute is not by its terms applicable to it in the light of the interstate character of its business, and that if the statute were applicable, it would be unconstitutional.

The case is submitted for final decree on the pleadings and proof as noted. The Court is of the opinion that the complainant is not subject to the franchise tax, and is entitled to the relief praved for.

Findings of Fact by Court

Transco was in 1956 and prior thereto a corporation organized under the laws of Delaware.

Transco was in 1956, and at all times has been, a natural gas company in interstate commerce within the meaning of the Act of Congress known as the Natural Gas Act, 15 U.S.C. 717-717w, and subject to the jurisdiction of the Federal Power Commission (hereinafter called FPC), operating in Alabama and other states solely under certificates of public convenience and necessity issued by the FPC.

Transco has never sought certificates of public convenience and necessity from, or approval of its rates and tariffs by, the State of Alabama or any other state, and the State of Alabama has never asserted any regulatory authority or jurisdiction over any of its rates or practices.

During the year 1956 Transco owned and operated an interstate natural gas transmission system extending from sources of gas supply in Texas and Louisiana through the States of Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey to a terminus at New York City.

On January 1, 1956, the length of Transco's pipeline, with laterals, was approximately 3,087 miles of which approximately 353 miles were located in Alabama. The total capital employed by Transco within the State of Alabama on that date (computed in accordance with the method prescribed for Alabama franchise tax purposes) was $32,750,000, while the total capital employed by Transco everywhere (computed in the same manner) as of the same date was $277,847,352.

As the gas transported and sold by Transco moved through the interstate transmission system, its pressure was gradually lost by friction, requiring the use of compressor stations located at intervals to increase the pressure so that the gas would continue to move. The pressure of the natural gas was increased by 200 to 250 lbs. at each compressor station (the normal pressure on the inlet side in each compressor station being from 550 to 600 lbs. per square inch, and the normal pressure on the outlet side being uniformly 800 lbs. per square

inch). Three compressor stations were owned and operated by Transco in Alabama in 1956: Station 9 near Myrtlewood, Alabama; Station 10 near Billingsley, Alabama; and Station 11 near Wadley, Alabama.

Each compressor station was comprised of several buildings and facilities, such as compressor building, meter building, water tank and houses.

At each compressor station in Alabama Transco used gas from its main pipeline as fuel for the following purposes:

(1) for main compressor engines at Stations 9 and 11 and for steam boiler at Station 10, the steam so generated driving the turbines on the compressor;

(2) for auxiliary engines at Compressor Stations 9, 10 and 11, which engines generated electricity which was used for the sole purpose of providing power at each compressor station, including electric power for the houses at each compressor station and for operation of pumps bringing water from sources of supply to the tanks; and

(3) for heating office, shop and warehouse facilities and houses at each compressor station.

Transco procured water from rivers, creeks, springs or wells on or close to each compressor station in Alabama. The company maintained one or more large tanks at each station for water for domestic and personal use at all buildings which were a part of the station, and also maintained one or more large tanks at Stations 9 and 10 for water necessary for the operation of the station. The water was pumped from the sources of supply to the tanks by pumps

In order to assure the operation of each compressor station it was necessary for trained persons to be readily available for duty at all times. For this purpose, Transco maintained six houses at Compressor station 10 and seven houses at [illegible] respectively stations 9 and 11, respectively. Transco required the superintendent and repair foreman of each station occupy a house and that four houses be occupied by persons [illegible] employed in the operation of the station. Likewise, in order to assure uninterrupted operation of the communication system it was necessary that the communication employee at Station 10 and 11 be readily available at all times for duty or call in the event of an emergency, and for that purpose, Transco required that the communication employee occupy one of the houses at these stations. Transco rented each house to the employee required to live therein for $40 a month and furnished, without charge, to each house electricity generated by Transco [illegible] and by Transco and water from the domestic supply. The rent for each house was less than the annual depreciation.

The construction, ownership and operation of each compressor station and of every building and facility at each compressor station, the use of its own gas, the generation of electricity and the procurement and use of water at each compressor station is a substantial, necessary, integral and inherent part of the interstate transportation of natural gas by Transco in its interstate transmission system.

On January 1, 1956, Transco was not doing any construction work in Alabama and had no contract with any person for the operation for any construction work in Alabama. Pursuant to Transco's application the FPC authorized Transco [illegible]

and operate certain facilities, the FPC finding that such facilities would "constitute an integral part of Transcontinental's interstate transmission system, and the sales proposed to be made . . . are sales in interstate commerce for resale." Transco made in 1956 certain contracts with independent contractors for the work authorized by the FPC. During 1956 Transco had various independent contractors do work in connection with facilities owned and operated by Transco in Alabama. This work was on Transco's existing interstate facilities or on the construction of new facilities which became a necessary, inherent and integral part of Transco's interstate transmission system.

The order of the FPC granting Transco its certificate of public convenience and necessity provided that "Transcontinental is authorized to transport and sell natural gas in interstate commerce" to certain companies and communities, including some in Alabama, and that "Transcontinental shall not transport or sell natural gas to or for any customer except as authorized herein". From time to time, the FPC ordered Transco to serve additional municipal corporations in Alabama. During 1956 Transco sold gas in Alabama to no person, firm or corporation except the following municipal corporations: City of Butler, City of Linden, City of Thomaston, City of Wadesville, City of Rockford, City of Clanton, East Central Alabama Gas District (serving Cities of Ashland, Lineville and Goodwater), City of Alexander City, City of Wadley, City of Roanoke and City of Wedowee. The sale of gas to each was pursuant to and in conformity with orders of the FPC, entered in response to petitions of the purchasers or their official representatives praying mandates directing the sales and facilities used for

deliveries were constructed pursuant to and in conformity with orders of the FPC.

At all times during 1956 Transco had a service agreement with each municipal corporation in Alabama to which it sold gas providing for delivery of the allocation of gas then authorized by the FPC. Each such service agreement provided:

"Pressure

"Seller shall deliver natural gas to Buyer at the Point(s) of Delivery at a pressure(s) of:

Not less than fifty (50) pounds per square inch gauge."

"Incorporation of Rate Schedule and General Terms and Conditions

"This agreement incorporates the applicable provisions of Rate Schedule(s) _____ of Seller and is subject to the provisions of the General Terms and Conditions of Seller's FPC Tariff which Seller has filed or shall file with the Federal Power Commission. Both the Rate Schedules and General Terms and Conditions of Seller's FPC Gas Tariff are made a part hereof by reference."

The "Seller's FPC Tariff" referred to in the aforesaid service agreements is Transco's Tariff issued on October 15, 1950 effective November 15, 1950 (and, as revised and amended still in force and effect), which is on record with the Federal Power Commission under the caption: "Transcontinental Gas Pipe Line Corporation FPC Gas Tariff, Original Volume No. 1". Paragraph numbered 12, which appears on "Original Sheet No. 44" of the said FPC Gas Tariff, Original Volume No. 1 provides:

"12. Pressures

"Seller shall deliver natural gas to Buyer at Seller's line pressure at the Point or Points of Delivery designated in the Service Agreement, but the maximum and minimum pressures may be as agreed upon by Buyer and Seller in the Service Agreement. The minimum pressure shall not be less than fifty (50) pounds per square inch gauge."

During 1956 Transco owned and operated 12 meter stations designed to measure gas delivered to municipalities located in Alabama. Every meter station was as near the main pipeline as prudent engineering, reasonable accessibility and accepted safety practices would permit. All but three of such meter stations were within 100 feet of the pipeline, and the remaining ones were within 210 feet. All facilities to the point of delivery were owned by Transco. All facilities after the point of delivery were owned by the purchaser of the gas. All meter stations and all facilities thereat were necessary, inherent and integral parts of the business of interstate transportation and delivery of natural gas.

Transco has never had any control or interest, direct or indirect, with respect to the design, construction, operation or maintenance of the gas system of any municipality or other operation in Alabama.

The average pressure of the natural gas in the pipeline at each meter station in Alabama and the average pressure at which gas was delivered to each municipal corporation was as follows in 1956

Meter Station	Average Pressure of Gas in Pipeline	Average Pressure at Which Gas was Delivered
Butler	600 psig *	130 psig *
Linden	755 "	158 "
Thomaston	745 "	125 "
Maplesville	560 "	160 "
Clanton	775 "	200 "
Rockford	745 "	100 "
Alexander City	725 "	200 "
(East Central Alabama Gas District)		
Goodwater	725 "	150 "
Ashland-Lineville	675 "	405 "
Wadley	640 "	80 "
Roanoke	685 "	200 "
Wedowee	685 "	125 "

* pounds per square inch gauge

As is indicated in the service agreements and the tariff hereinabove quoted, Transco was prohibited from delivering gas at pressures less than 50 lbs. per square inch gauge. There was, however, no provision in such service agreements or tariffs prohibiting deliveries of gas at higher pressures. Transco's customers are, and at all times have been, on notice that they can be required to take gas at Transco's pipeline pressure. Transco's pressure regulating equipment has been installed, in every meter station, for the sole purpose of permitting accurate measurement of the volumes of gas delivered.

The gas purchased in 1956 by each municipal corporation in Alabama was purchased primarily for resale with small quantities of it being used and consumed by each purchaser other than East Central Alabama Gas District. No municipal corporation, except the City of Butler, used or consumed more than

2% of the gas purchased; in most instances, the amount used and consumed was less than 2%. The City of Butler had leaks in its system, and the exact amount used by it cannot be determined. It is reasonable to conclude, however, that the City of Butler used and consumed a maximum of 2% of the gas purchased and that it probably used or consumed less than 2%.

None of the municipal corporations purchasing gas from Transco in Alabama in 1956 could resell or use the gas at the pressure at which it was received, and each had to further reduce the pressure before reselling or using the gas. The maximum pressure at which each municipal corporation resold or used the gas in 1956 was as follows:

Municipality	Maximum Pressures Expressed in Normal Measurement Terms	Approximate psig Equivalent of Water Column Measurement
City of Butler	6" water column	00.21 psig *
City of Linden	7" water column	00.25 "
City of Thomaston	6" water column	00.21 "
City of Maplesville	5 psig	05.00 "
City of Clanton	15" water column	00.54 "
City of Rockford	7" water column	00.25 "
City of Alexander City	5 psig.	05.00 "
East Central Alabama Gas District	12" water column	00.43 "
City of Wadley	7" water column	00.25 "
City of Roanoke	7" water column	00.25 "
City of Wedowee	7" water column	00.25 "

* pounds per square inch gauge

Transco had in 1956 an integrated VHF mobile and microwave radio-telephone communication system which paralleled its transmission system and was used solely in connection with

the construction, maintenance, and operation of, and was an integral and necessary part of its interstate transmission system.

During 1956 Transco rented buildings, or portions of buildings, in Alabama to house work equipment and a foreman's pickup truck. A pipeline gang worked out of each building or portion thereof. Each pipeline gang was engaged solely in maintenance of a section of the interstate pipeline and the right of way on which this section was located. The work equipment and the pickup truck were used solely in connection with the work of the pipeline gang.

During the same period, Transco also rented two buildings at Alexander City for a district office. The buildings housed district personnel, office equipment, material and small work equipment. The district office was responsible for the maintenance of a section of the interstate pipeline.

Transco rented for approximately two weeks during 1956 a small office in connection with the construction authorized by the FPC and done by independent contractors, and temporarily stored in Alabama pipe to be used in this construction.

Each such building (or portion of a building) and office, the use of each such building and office, and the temporary storage of pipe was a necessary, inherent and integral part of the interstate transportation of natural gas.

Transco maintained during 1956 a small bank account for working funds in each of four banks in Alabama. In connection with the construction work authorized by the FPC, Transco

established two small temporary construction working fund accounts with a bank in Houston, Texas. The working fund construction working fund accounts were established in order to provide a means of local payment of miscellaneous minor items purchased, which could be handled more conveniently on a local basis and were a necessary, inherent and integral part of the transportation of natural gas, or the construction of facilities for such transportation.

On October 3, 1951, Southern Natural Gas Company (hereinafter called Southern) filed with the FPC an application, given Docket No. G-1803, which was amended December 3, 1951 for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities for the exchange or sale and delivery of natural gas between Southern's pipeline system and Transco's pipeline system. The application as amended proposed to establish, among others, an interconnection between Southern's system and Transco's system on Southern's 18" Gwinville-Selma line near Selma, Alabama.

On October 16, 1951, Transco filed with the FPC an application given Docket No. G-1819, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities necessary for Transco to complete the interconnections with Southern's system and to exchange or sell and deliver natural gas by means of said interconnections, which application was supplemented on December 13, 1951. Transco's application as supplemented proposed to establish, among other things, a meter station and

appurtenant facilities on Transco's "30" main transmission pipeline near Selma, Alabama.

On January 18, 1952, the FPC issued its findings and order issuing certificates of public convenience and necessity (Docket Nos. G-1803 and G-1819, 11 F.P.C. 740). Among other things, the Commission found (11 F.P.C. 741) that

> "(1) Southern and Transcontinental, Delaware corporations, having their principal places of business in Birmingham, Alabama, and Houston, Texas, respectively, are engaged in the transportation and sale of natural gas for resale in interstate commerce, subject to the jurisdiction of the Commission and each is a 'natural-gas company' within the meaning of the Natural Gas Act, as heretofore found by the Commission. *In the Matter of Southern Natural Company*, Docket No. G-296, 3 FPC 822, and *In the Matter of Transcontinental Gas Pipe Line Corporation*, Docket No. G-1277.
>
> "(2) The facilities hereinbefore described are proposed to be used in the transportation and sale of natural gas for resale in interstate commerce, subject to the jurisdiction of the Commission, as integral parts of the Applicants' existing pipeline systems and the construction and operation thereof by the Applicants are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act."

The Commission ordered, inter alia (11 F.P.C. 741) that

> "(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Southern and Transcontinental to construct and operate the facilities hereinbefore described, all as more fully described in each of the applications hereinbefore mentioned and the exhibits appended

thereto, for the transportation and sale of natural gas as therein set forth, subject to the pursuit from of the Commission upon the terms and conditions of this order."

Pursuant to the findings and orders of January 18th Transco and Southern constructed the authorized facilities at or near Selma, Alabama. Transco's facilities consisted of four 10" orifice meter stations with necessary pipe, valves and fittings and instruments, partly contained within a 4' x 6' light steel building with 112' of 10" yard pipe connected with Transco's 30" main pipeline. During 1956 the facilities were as originally constructed.

On November 26, 1951, Transco and Southern entered into a contract which was subject to obtaining necessary authorization from the FPC and under which Transco agreed to sell natural gas to Southern.

On November 26, 1951, Southern and Transco entered into a contract which was subject to obtaining necessary authorization from the FPC and under which Southern agreed to sell natural gas to Transco.

During 1956 Transco sold no gas to Southern in Alabama. During the period beginning May 17, 1956, and ending May 29, 1956, and the period beginning June 29, 1956, and ending June 30, 1956, Southern, pursuant to contract of November 26, 1951, sold gas to Transco in Alabama. Transco purchased gas in May and June, 1956, due to temporary shutdown of its transmission system west of Alabama on account of construction or relocation of its system. During said periods Southern sold Transco a

total of 148,242 MCF of natural gas for which Transco paid Southern the sum of $31,068.

All of the natural gas sold in Alabama in 1956 by Southern to Transco was produced in states other than the State of Alabama and brought into the State of Alabama from such other states by Southern's pipeline system, and none of it was produced in the State of Alabama.

The pressure of the gas was not reduced in the course of the delivery from Southern to Transco.

In connection with the construction, maintenance and operation of Transco's interstate transmission system, employees from other states occasionally worked in Alabama in 1956.

Transco has never maintained any general or corporate office in Alabama, nor has it any personnel located in this state who are authorized to solicit business, accept contracts for purchase or sale of gas, settle or adjust accounts, determine managerial policy, or otherwise perform management functions other than those relating solely to the operation, construction and maintenance of its interstate transmission system. In 1956 and prior thereto Transco's statutory domicile was in Delaware and its principle corporate and operating office was in Houston, Texas. Transco maintained records in Alabama showing the time worked by employees in Alabama. At Stations 9, 10 and 11 and at the district office at Alexander City, Transco maintained records pertaining to the bank account used by each. At each compressor station Transco maintained stock records showing supply parts for the station in hand, equipment records showing

equipment in use at the station, maintenance records showing maintenance work done on the equipment at the station, and miscellaneous operating records required by the FPC to be kept at the station. Similar records were maintained by personnel assigned temporarily to construction activities during the limited period of such construction activities. Transco maintained no other records of any type in Alabama.

Transco, of course, had employees in Alabama at all times during 1956. All employees, whether permanently stationed in or temporarily present in Alabama, were engaged solely and directly in the service of constructing, maintaining and operating Transco's interstate transmission system.

Transco had 17 automotive vehicles in Alabama at sometime during the year 1956. The automotive vehicles were used only to carry employees from place to place in connection with their work in the construction, maintenance and operation of the pipeline, to carry needed supplies and for other purposes directly connected with the construction, maintenance and operation of the pipeline.

Transco has paid all ad valorem taxes assessed by proper state authorities on its property located in Alabama, income taxes to the State of Alabama on its net income allocated to business done in Alabama, sales or use taxes on all tangible personal property purchased or used in its interstate activities in Alabama, and unemployment compensation taxes with respect to its employees in Alabama. The amounts paid in 1956 were as follows:

Ad valorem taxes on property	$ 262,289.00
Sales and use taxes	12,971.00
Income tax	1,611.00
Unemployment compensation taxes	1,663.00
Total	$ 278,534.00

The amount of all gross revenues (before deduction of gas purchase costs, operating expenses, maintenance expenses, or any other costs or charges whatsoever) derived by Transco from all Alabama sources during the year 1956 was $284,297.00.

All of the business, activities, and operations of Transco in Alabama are carried on solely in furtherance of and are inherent, integral and necessary parts of the interstate transportation of natural gas. All of the property of Transco located in Alabama, both real and personal, is committed to and used solely in said interstate business. Transco does not, and did not in 1956, engage in any local or intrastate business or activities whatsoever in Alabama.

Transco duly filed, on forms prescribed by the State Department of Revenue, a franchise tax return for the year 1956. After hearing protest on behalf of Transco against the assessment of any franchise tax for the year 1956, a final assessment in the amount of $81,875.00 was made by the State Department of Revenue on the 19th day of March, 1958.

This appeal is before the Court from the final assessment and was duly filed within the time and in the manner prescribed by the statute, Title 51, Section 140, Alabama Code of 1940.

Conclusions of Law

1. Transco duly appealed to this Court from the final assessment of foreign corporation franchise tax (Title 51, Sections 348, et seq., Code 1940) for the year 1956 and this Court has jurisdiction over this suit.

2. The Alabama franchise tax on foreign corporations is not applicable to a foreign corporation which is engaged exclusively in interstate commerce in Alabama, whether or not the corporation has sought and obtained permit to do a local business in Alabama. *State v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So.2d 849 (1956), *cert. den.* 352 U.S. 943, 1 L.Ed.2d 273.

3. The Alabama foreign corporation franchise tax, if applicable to a foreign corporation which is engaged solely in interstate commerce in Alabama in 1956, is unconstitutional. *State v. Plantation Pipe Line Company, supra.*

4. Transco was engaged solely in interstate commerce in Alabama in 1956. As was said in *State v. Plantation Pipe Line Company, supra*: "It cannot be asserted that interstate commerce, to be immune from taxation, must be conducted in some sort of vacuum without tangible property, personnel or incidental activities within the boundaries of the state." All business, activities, and operations of Transco in Alabama were necessary, inherent and integral parts of its interstate transportation and sale of natural gas and cannot realistically be separated from it.

There are no material differences between the facts of this case and those presented in the *Plantation* case. The operative

facts of both cases are substantially identical, and the Court could, with propriety, rest its judgment that Transco was engaged in interstate commerce in Alabama in 1956 on the decision of the Supreme Court in that case. However, the Court has carefully considered the contentions of the State, and compared the facts there and here and in the light of the authorities, it is clear that there is no possibility of a different conclusion here. The controlling cases are: *Spector Motor Service, Inc., v. O'Connor*, 340 U.S. 602, 95 L.Ed. 573 (1951); *Ozark Pipe Line Corporation v. Monier*, 266 U.S. 555, 69 L.Ed. 439 (1925); *United Airlines, Inc., v. Joseph*, 282 App.Div. 48, 121 N.Y.Supp.2d 692 (1953), *affirmed* 307 N.Y. 762, 121 N.E.2d 557 (1954); *Mississippi River Fuel Corporation v. Hoffman*, 4 Ill.2d 468, 123 N.E.2d 503 (1955), *cert. den.* 349 U.S. 935, 99 L.Ed. 1264 (1955); *Texas Gas Transmission Corp. v. Atkins*, 197 Tenn. 123, 270 S.W.2d 384 (1954), *cert. den.* 348 U.S. 883, 99 L.Ed. 694 (1954); *Gay v. United Gas Pipe Line Company*, 159 Fla. 659, 32 So.2d 600 (1947); *Panhandle Eastern Pipe Line Company v. Public Service Commission*, 332 U.S. 507, 92 L.Ed. 128 (1947); and *State Tax Commission of Mississippi v. Interstate Natural Gas Company*, 284 U.S. 41, 76 L.Ed. 156 (1931).

In view of these decisions, it is abundantly clear that Transco was engaged exclusively in interstate commerce in Alabama in 1956. The State, however, has suggested several reasons why it should be held that Transco was engaged in intrastate commerce. An examination of these suggestions reveals that each is without merit.

(a) The State argues that Transco reduced the pressure of gas before delivering it. It was held in *Mississippi River Fuel*

Corporation v. Hoffman, supra, and *Gay v. United Gas Pipe Line Company, supra*, that each gas company was engaged exclusively in interstate commerce although each reduced the pressure of gas before delivery. On this point the State relies primarily upon *East Ohio Gas Company v. Tax Commission of Ohio*, 283 U.S. 465, 76 L.Ed. 1171 (1931), where the Supreme Court held that, under the facts there presented, the gas company was engaged in intrastate commerce. There are two fundamental differences between the facts of the East Ohio case and the present one:

1. Some of the gas sold by East Ohio in Ohio was produced in Ohio and had never left the state, while none of the gas sold by Transco in Alabama was produced in Alabama.

2. The gas was sold by East Ohio to the consumers at burner tip pressure, while here the pressure had to be further reduced by the purchaser before the gas could be used or resold by the purchaser.

Moreover, it is extremely doubtful that the holding in the *East Ohio* case has any present validity. See *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U.S. 498, 86 L.Ed. 371 (1942) and *Panhandle Eastern Pipe Line Company v. Public Service Commission, supra*. In the last cited case gas was sold to an industrial consumer and the pressure reduced before delivery. Yet, the Supreme Court held that such sales were in interstate commerce.

The argument is in any case wholly unrealistic. Interstate commerce must be accomplished in accordance with the state

of the act involved and in a practical, convenient and economical manner. Reduction of pressure is a reasonably and necessary part of interstate delivery. To say that transportation of gas loses its interstate character merely by reduction of pressure for the purpose of delivery is like saying that interstate railroad traffic loses its character unless passengers or freight are thrown off of the trains as they move through the state at 60 miles per hour.

(b) The second argument made by the State is that all gas sold by Transco was not resold by the purchaser. In *State Tax Commission of Mississippi v. Interstate Natural Gas Company, supra,* the Supreme Court held that sales of gas to local distributing companies were sales in interstate commerce. The authority of this case has never been questioned, and its holding has frequently been affirmed by the United States Supreme Court. *Illinois Natural Gas Company v. Central Illinois Public Service Company, supra; Panhandle Eastern Pipe Line Company v. Public Service Commission, supra.* In the last cited case the court said:

> "Thus gas furnished to local utilities for resale is supplied unquestionably both as to transportation and as to sale, in interstate commerce."

The fact that the municipal corporations to whom Transco was ordered to sell gas used or consumed small quantities does not prevent this case from being controlled by *State Tax Commission of Mississippi v. Interstate Natural Gas Company, supra.* Even if the gas was all used or consumed by the purchasers, the sales and transportation would still be in interstate commerce under the decisions in *Mississippi River.*

Fuel Corporation v. Hoffman, supra, Gay v. United Gas Pipe Line Company, supra, Texas Gas Transmission Corp. v. Atkins, supra, and *Panhandle Eastern Pipe Line Company v. Public Service Commission, supra*

(c) A third argument on Behalf of the State is that Plantation was a common carrier, while Transco transported its own product, and as a corollary, Plantation did not sell its product while Transco did. The argument appears to be based on the notion that commerce means only transportation. The fact is, of course, that most commerce involves the purchase and sale of commodities.

Persons transporting their own product, gas, which they sell, can be, and are, engaged exclusively in interstate commerce. In *Mississippi River Fuel Corporation v. Hoffman, supra; Texas Gas Transmission Corporation v. Atkins, supra; Gay v. United Gas Pipe Line Company, supra;* and *Panhandle Eastern Pipe Line Company v. Public Service Commission, supra,* It was held that gas companies transporting natural gas which they owned and which was sold to local utilities for resale, and to industrial customers for consumption, were engaged exclusively in interstate commerce.

As pointed out above, the mere fact that Transco delivers gas in Alabama is obviously immaterial. In *Railway Express Agency, Inc., v. Commonwealth of Virginia,* 347 U.S. 359, 98 L.Ed. 757 (1954), the Supreme Court distinctly said:

> "It is enough to say that we recently have ruled that local incidents such as gathering up or putting down interstate commodities as an integral part of their

interstate movement are not adequate grounds for a state license, privilege or occupation tax."

(d) Another argument made by the State is that Transco received gas from Southern Natural in Alabama.

The fact that Transco received interstate gas from Southern Natural in Alabama at pipeline pressure during one three-day period and one two-day period does not indicate that Transco was engaged in intrastate commerce in Alabama for several reasons:

(1) In the order authorizing the construction of the facilities for exchange of gas between Southern Natural and Transco the FPC found "Southern and Transcontinental . . . are engaged in the transportation and sale of natural gas for resale in interstate commerce" and that "the facilities hereinbefore described are proposed to be used in the transportation and sale of natural gas for resale in interstate commerce".

(2) All of the natural gas sold in Alabama in 1956 by Southern Natural to Transco was produced in states other than the State of Alabama and brought into the State of Alabama from such other states by Southern Natural's interstate pipeline system.

(3) The pressure of the gas was not reduced in the course of the sale from Southern Natural to Transco. The interstate movement of the gas was in no sense broken or interrupted.

(e) A point is made of the fact that Transco produced electricity for its own use from gas owned by it. As is indicated in

the findings of fact above, however, this was but a necessary incident to the requirements of interstate transmission of the gas.

The State relies on *Coverdale v. Arkansas-Louisiana Pipe Line Company*, 303 U.S. 604, 82 L.Ed. 1043 (1938) where Louisiana imposed a license tax of $1 on each horsepower of capacity of machinery or apparatus, known as "prime movers" operated. The gas company obtained gas in Louisiana and transported it by pipeline extending into Texas and Arkansas. According to the Supreme Court, 303 U.S. at 606, 82 L.Ed. at 1046, "Ninety-six and 6 10 per cent. (96.6%) of the gas transported through this line during the fiscal year ended July 31 1933, was delivered outside the State of Louisiana."

The gas could not be transmitted through the pipeline unless it was delivered into the pipeline at a pressure higher than that at which it came from the wells. The gas company maintained at the point of intake into its lines its initial compressor station designed to increase the pressure of the gas. The gas company operated prime movers in connection with its initial compressor station. It was held subject to the tax.

Two fundamental differences between the instant case and the *Coverdale* case are readily apparent:

1. The incidence of the two taxes are not the same. The incidence of the tax in the *Coverdale* case was not on the privilege of doing an interstate business or on interstate commerce but on the operation of the prime movers. The tax in this case is not applicable to foreign corporations engaged exclusively in interstate commerce in Alabama. The fact that a

corporation uses its own product transported in interstate commerce to produce electricity to operate a compressor station necessary to further transport its own product in interstate commerce does not indicate that such corporation is engaged in intrastate commerce, and the *Coverdale* case does not hold to the contrary.

2. In the *Coverdale* case the gas company apparently sold in Louisiana gas produced there. This was the doing of an intrastate business. In this case Transco does not sell or transport in Alabama any gas produced here.

Moreover, the *Coverdale* case was decided during the brief period when the "cumulative burdens" test of determining the validity of a tax was a predominant consideration with a majority of the justices. Recent decisions of the Supreme Court indicate that this test is no longer of controlling significance.

(f) The State further argues that, since Alabama could regulate certain rates of Transco, e.g., sales to industrial consumers, by virtue of the fact that Congress expressly left such regulation to the state under the Natural Gas Act, the State can also impose a franchise tax on Transco. This argument is completely answered in the *Hoffman* case as follows:

> "Appellants have allowed themselves to become confused between interstate commerce in its constitutional aspect and that part of interstate commerce which Congress chose to take under Federal regulation by the Federal Natural Gas Act of 1938, 15 U.S.C.A. §717 et seq. In that act Congress gave to the Federal Power Commission power to regulate rates and all other aspects of sales of gas by interstate pipelines to purchasers for resale, the purchasers being, in general,

local public utility companies. But in that act Congress refrained from giving to the Federal Power Commission power to regulate the rates for gas sold by interstate pipelines to customers who took gas for their own use. (See Panhandle case.) *But this statutory distinction which Congress elected to make certainly did not mean, as appellants seem to deduce, that the sales for resale were sales in interstate commerce while the sales to industries for their own use were not. . . .*" (Emphasis supplied)

The conclusion is inescapable, on this record, that Transco was engaged exclusively in interstate commerce in Alabama in 1956.

5. It follows that Transco did not owe any franchise tax to the State of Alabama for the year 1956 and that the assessment was invalid in its entirety.

Judgment

It is, therefore, ORDERED, ADJUDGED and DECREED:

1. The assessment of franchise tax against appellant for the year 1956 made by the State Department of Revenue is invalid in its entirety.

2. The principal and surety on the bond given in this case pursuant to statute be and each hereby is discharged from all liability.

3. The costs herein accrued be and the same hereby are taxed against the State of Alabama.

DONE and ORDERED this 24 day of February, 1959.

s/ Walter B. Jones

Circuit Judge

Appendix "F"

Title 51, Section 348, as Amended, Code of Alabama 1940:

"§ 348. Amount of Levy on Foreign Corporations.—Every corporation organized under the laws of any other state, nation or territory and doing business in this state, except strictly benevolent, educational or religious corporations, shall pay annually to the state an annual franchise tax of two and one-half dollars ($2.50) on each one thousand dollars ($1,000.00) of the actual amount of capital employed in this state. In ascertaining the annual franchise tax which will be paid by any foreign corporation doing business in this state under this section there shall be deducted from the amount of the capital employed by such corporation in this state the aggregate amount of loans of money made by such corporation in this state and which shall be secured by existing mortgage or mortgages to it on real estate in this state and upon which mortgage or mortgages there shall have been paid the recording privilege tax provided by law. Provided, that if a corporation has qualified to do business in this state it shall for the purpose of franchise tax prima facie be held to be doing business in the State of Alabama within the meaning of this title."

Appendix "G"

Constitution of Alabama of 1901, Article 12, Section 232:

"Sec. 232. No foreign corporation shall do any business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the state. The legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational or religious corporations shall not be required to pay such a tax."

Appendix "H"

Constitution of the United States, Article I, Section 8, Clause 3

"Section 8. The congress shall have power: —. . .

* * * * * * * *

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;"